

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

JOHN NOAKES

Plaintiff,

v.

CASE WESTERN RESERVE
UNIVERSITY, ET AL

Defendants

Case No. 1:21-cv-01776

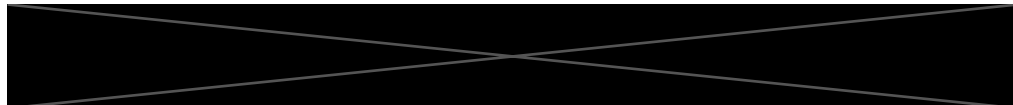
Judge: BARKER

AFFIDAVIT OF JOHN NOAKES

1. I am the Plaintiff in this case. I am submitting this Affidavit in support of the Motion for a Temporary Restraining Order.
2. On September 21, 2021, I received a copy of the attached letter indicating that I am facing discipline in regard to a 'Tumblr' that describes some of the events related to the investigation and adjudication of the allegations that I engaged in sexual misconduct.
3. I believe that the Tumblr is the same website referred to in ¶¶ 96-98 of the Complaint.
4. I did not create the Tumblr.
5. I have not taken any steps to publicize the Tumblr.
6. I have no knowledge of who is making the Tumblr posts and have not directed anyone to make such posts.
7. I reviewed the Tumblr after receiving a link from CWRU. I was not aware of the Tumblr prior to being informed of its existence by CWRU. The Tumblr mentions my name but does not identify Jane Roe by name. The Tumblr is critical of the manner in which CWRU handles investigations of allegations of sexual misconduct.

8. The letter indicates that I am facing discipline because I shared information from the hearing on Jane Roe's Title IX complaint against me for nonconsensual sexual contact. Nothing in the CWRU policies or procedures requires me to keep this information confidential.
9. The letter indicates that I am facing discipline because I shared information about Jane Roe, including screenshots of my communications with Jane Roe in 2020. Nothing in the CWRU policies or procedures requires me to keep this information confidential.
10. The letter indicates that I am facing discipline because I shared information about correspondence between me and the Office for Equity. Nothing in the CWRU policies or procedures requires me to keep this information confidential.
11. The letter indicates that I am facing discipline because I declined to take steps to stop the person who is posting information to the Tumblr. Since I don't know who is posting the information, I could not comply. Nothing in the CWRU policies or procedures requires me to investigate the origin of the Tumblr or ask another person to stop making statements critical of CWRU.
12. The investigation against me is precisely the retaliation promised by Dr. Greenfield described in the Complaint and my Affidavit. I am fearful that CWRU will continue to take additional retaliatory actions against me. Further adverse actions by CWRU will deny me the benefits of education at my chosen school, damage my academic and professional reputations, and may affect my ability to enroll at other institutions of higher education and to pursue a career. Being subjected to the Title IX investigatory is likely to deter my fellow students from complaining about the CWRU Title IX process, defending themselves in a Title IX process, or challenging retaliatory actions.

Pursuant to 28 U.S. Code § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of September 2021.

A large black rectangular redaction box covering the signature area.

[REDACTED] a/k/a John Doe



Office of Equity

10900 Euclid Avenue
Cleveland, Ohio 44106-7048

Visitors and Deliveries
2120 Cornell Road, Suite 1180

Phone 216.368.3066
www.case.edu

September 21, 2021

[REDACTED]

Case Western Reserve University

[REDACTED]

Electronic Delivery

RE: Notice of Formal Complaint of Retaliation

Dear [REDACTED]

The Office of Equity received a formal complaint from [REDACTED] alleging that you may have engaged in retaliation in violation of the *Sexual Harassment Policy* of the Case Western Reserve University, including misconduct relating to content posted at <https://atltexts.tumblr.com/> (the "Tumblr Account") on and around September 10, 2021.

The basis for this formal complaint of retaliation is (1) the level of detail in the Tumblr Account about your situation in the Medical School and how it affects you from your perspective, (2) the access that the Tumblr Account has to screenshots that came originally from your phone, (3) the self-description of the person controlling the Tumblr Account and his/her close relationship to you, (4) the promptness by which the Tumblr Account learned of the litigation filed by John Noakes and posted it to the Tumblr account, (5) the references in the Tumblr Account to the Office of Equity's communications with you since August 2021 (including, but not limited to examples such as the No Contact Directive, the withdrawal of the No Contact Directive, the reaction of [REDACTED] to seeing your mother in class and the outcome of your complaints to the Office of Equity regarding [REDACTED]) and (6) the references in the Tumblr Account to the Medical School's recent communications to you regarding empathy.

Specifically, it is alleged that you retaliated against [REDACTED] by:

- Sharing confidential information from the hearing on [REDACTED] 2020 Title IX complaint against you for nonconsensual sexual contact.
- Posting information, including screenshots of your communications with [REDACTED] in 2020, to the Tumblr Account that is designed to embarrass, harass or punish [REDACTED] for complaining to the CWRU Office for Equity that you subjected her to nonconsensual sexual contact.

- Sharing information, including screenshots of your communications with [REDACTED] in 2020 and correspondence between you and the Office for Equity in September 2021, with someone who you knew or reasonably should have known would then post some or all of that information to the Tumblr Account in a manner that is designed to embarrass, harass or punish [REDACTED] for complaining to the CWRU Office for Equity that you subjected her to nonconsensual sexual contact.
- Declining on and after September 10, 2021, to cease sharing information including screenshots of your communications with [REDACTED] in 2020 and correspondence between you and the Office for Equity in September 2021, with someone who you knew or reasonably should have known would then post some or all of that information to the Tumblr Account in a manner that is designed to embarrass, harass or punish [REDACTED] for complaining to the CWRU Office for Equity that you subjected her to nonconsensual sexual contact.
- Taking steps, on your own or in conjunction with one or more others, to publicize the Tumblr Account as much as possible in the CWRU Medical School, including by using an Instagram account to follow numerous persons in the Medical School, specifically, your entire class, as well as faculty and staff in the Medical School, to increase the number of views of the material posted to the Tumblr Account.
- Declining on and after September 10, 2021, to take steps to stop the person who is posting information to the Tumblr Account when directed to do so by the Title IX Coordinator.
- Declining on and after September 10, 2021, to identify for the Title IX Coordinator the name of the person who is posting to the Tumblr Account when the level of detail in the information posted to the Tumblr account indicates that the account is controlled by you or someone very close to you.

This letter serves as formal notice that CWRU will be conducting a prompt, thorough, and impartial investigation of these allegations pursuant to the procedures applicable to retaliation claims and which are detailed in the *Sexual Harassment Policy* at <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:01fb6d44-c072-4403-a5ce-78908749ce2b#pageNum=1>. A copy of this notice is being provided to [REDACTED].

Specifically, CWRU will investigate whether you violated the following provision(s) of the [Sexual Harassment Policy](#):

- **Part I, Section N (“Retaliation”)**

The procedures applicable to this matter are set out in Part I, Section N of the *Sexual Harassment Policy*.

If you are found responsible for violating Part I, Section N of the *Sexual Harassment Policy*, you may face sanctions such as:

- Disciplinary Warning
- Disciplinary Probation
- Separation from CWRU
- Expulsion from CWRU
- Required Education and Training

- Organizational Sanctions
- Community Service
- Restitution
- Rehabilitation
- Restriction (temporary or permanent loss of use of CWRU facilities or services or access to extracurricular activities or other opportunities)
- Withholding Diploma
- Revocation of Degree
- Creative or alternative sanctions

The list of possible sanctions is available in Part IV, Section A of the *Sexual Harassment Policy*.

You are considered “not responsible” for violating the *Sexual Harassment Policy* unless and until a preponderance of the evidence proves that a violation of Policy has occurred. The burden is on CWRU to gather evidence, investigate the allegations, follow the applicable procedures and make a fact-based determination, subject to appeal. No determination of responsibility will be made until the conclusion of the process and after the parties have been given an opportunity to inspect, review, and respond to all directly related and/or relevant evidence obtained by CWRU.

Should additional allegations emerge over the course of this investigation, the Office of Equity will provide you with an updated and revised Notice of Investigation and Allegations.

The *Sexual Harassment Policy* is available at this [link](#). If you require a hard (paper) copy, please let me know and one will be promptly provided to you. You can find a statement of your rights in the investigation process on pages 57-59 of the *Sexual Harassment Policy*. The University cannot require you to participate in this process. If you don't participate, the investigation will continue and an outcome will be determined based on the available information and without the information you would have provided. If you do not intend to participate in the investigation, please let me know.

Investigation & Interview

I have assigned Investigator(s) Carrie Valdez and Carole Rendon, at the Baker Hostetler law firm, to investigate this matter. These investigator(s) are neutral professionals who will objectively collect and compile available information relevant to the allegations and compose a thorough, detailed investigation report. One or both of them will meet with you and other witnesses in this matter. You will receive notes documenting you meeting with the Investigator(s) to review for accuracy.

The Investigator(s) will reach out to you to set up time to meet. You may provide the Investigator(s) evidence which you want considered in the investigation, such as screenshots of social media posts or electronic conversations (e.g., Snapchat, Facebook Messenger, WhatsApp, TikToks, text messages, etc.), written communications, audio or video recordings, photos, receipts, call logs, or other relevant information. You may also share with the Investigators the names of witnesses and others with knowledge of the allegations, and the information known by those witnesses, and the Investigator(s) will contact those witnesses. When you meet with the Investigator(s), you may ask questions and should be prepared for them to ask you questions.

If you have questions regarding the qualifications or training of the Investigator(s), please feel free to contact me or review the training materials on our website at <https://case.edu/equity/sexual-harassment-title-ix/training-materials>. Similarly, if you are concerned that the investigator is

potentially biased or has a conflict of interest, you must raise that issue with me prior to your scheduled interview.

Advisors

You have the right to an Advisor of your choosing to accompany you to all steps in this process. Part I, Section O and Part III, Section D of the *Sexual Harassment Policy* contain information about the use of an Advisor in this process. **If you would like assistance obtaining a CWRU-trained Advisor, please let me know and I will obtain one for you.** If you proceed without an Advisor, and if this matter proceeds to a hearing pursuant to the *Sexual Harassment Policy*, CWRU will provide an Advisor to you for purposes of conducting questioning during the hearing.

Retaliation

Part I, Section N of the Sexual Harassment policy prohibits retaliation:

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the Grievance Process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

It is prohibited for CWRU or any member of the community to take or attempt to create adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy.



CWRU will investigate and sanction any faculty member, student or staff member found engaging in retaliation, and/or individuals who encourage third parties to retaliate on their behalf.

If you believe you are experiencing retaliation, please contact the Investigator(s) immediately.

False Statements and/or False Information

The *Sexual Harassment Policy* prohibits making false statements and/or providing false information in the course of any process held pursuant to that policy. CWRU may address allegations that a false statement was made deliberately in this process pursuant to the *Sexual Harassment Policy* and/or other applicable policies and procedures.

Confidentiality

You have the right to discuss this matter with your Advisor and others. CWRU will keep information about this matter as confidential as possible. CWRU asks you to do the same.   the Complainant, has been provided with the same information.

Supportive Resources

Receiving a communication like this one can be very stressful. I am available to assist you with connecting to CWRU resources that are available to support you. These resources include

academic and mental health support, and if you need other support, I will work with you to connect you to other appropriate resources. I encourage you to avail yourself of any of the following resources that you may find helpful as you work to resolve this matter.

- University Health and Counseling Services (UHCS) Counseling Services, Sears Building Suite, 201, 216-368-5872
- Interreligious Council, Phone: 216.421.9614
- Office of Student Affairs, Adelbert Hall, Room 110, Phone: 216.368.2020
- Disability Resources (available if you need reasonable accommodation due to a qualifying disability to fully and meaningfully participate in this process), Phone: 216.368.5230

If you have any questions, please let me know.

Sincerely,

Rachel E. Lutner

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